

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDY SCOTT WIECKHORST,

Plaintiff,

Case No. 1:10-cv-204

v

HON. JANET T. NEFF

HARRIET SQUIRE, et al.,

Defendants.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983, in which Plaintiff claims that Defendants' denial of needed back surgery constitutes deliberate indifference to his serious medical needs, in violation of his Eighth Amendment right to be free from cruel and unusual punishment. Defendants Squire, Holmes and Hammond ("PHS Defendants") filed a motion for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending this Court grant PHS Defendants' motion. The matter is presently before the Court on Plaintiff's "Motion for Appeale" (sic), now docketed as an Objection to the Report and Recommendation (Dkt 47). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff argues the Magistrate Judge erred in failing to consider all of the relevant facts concerning Plaintiff's previous doctor's statements, Plaintiff's MRI results, and an allegedly applicable Eleventh Circuit opinion (Pl. Obj., Dkt 47 at 1).

Plaintiff's argument is without merit. The Magistrate Judge referenced Dr. Marquart's statement regarding his opinion on the necessity of surgery to relieve Plaintiff's pain in the Report and Recommendation (Dkt 39 at 1). Additionally, the Magistrate Judge discussed the results of Plaintiff's MRI as part of a thorough recitation of Plaintiff's medical history (Dkt 39 at 6-7). Finally, the case law cited by Plaintiff from the Eleventh Circuit is not dispositive in the instant case, is distinguishable on the facts, and does not stand for the proposition Plaintiff suggests.

The Magistrate Judge correctly applied the applicable law and determined that the PHS Defendants were entitled to summary judgment since the decision to deny back surgery was based on an appropriate exercise of medical judgment. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997).]

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 47) are DENIED and the Report and Recommendation (Dkt 39) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (Dkt 28) is GRANTED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Dated: September 13, 2011

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge